

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	CIVIL ACTION No. 8:07-cv-2295-T-24TGW
)	
CUSTOM CLIMATE CONTROL, INC.)	
)	
Defendant.)	
_____)	

CONSENT DECREE

I. BACKGROUND

1. Plaintiff, the United States of America ("United States"), on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), has filed a Complaint concurrently with the lodging of this Consent Decree, against Custom Climate Control, Inc. ("Custom Climate"), an air conditioning servicing business located at 13311 60th Street North in Clearwater, Florida 33760 ("the Facility").

2. Pursuant to Section 113, of the CAA, 42 U.S.C. § 7413(b), the Complaint seeks civil penalties and injunctive relief from Custom Climate for 1) alleged violations of regulations 40 C.F.R. Part 82, Subpart F, Sections 82.152 - 82.166 ("Recycling and Emission Reduction") promulgated pursuant to Subchapter VI of the Clean Air Act ("CAA") ("Stratospheric Ozone Protection"), 42 U.S.C. §§ 7671-7671g, and 2) alleged violations of Section 114 of the CAA, 42 U.S.C. § 7414 (regulation requiring submittal of certain information to the EPA).

3. By entering into this Consent Decree, Custom Climate makes no admission of liability to the United States arising out of the transactions or occurrences alleged in the

Complaint and does not admit to any of the facts as alleged in the United States' Complaint.

4. The United States and Custom Climate agree, and this Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith, that the Decree is fair and reasonable, in the public's interest, and will benefit the public health, safety, and the environment.

THEREFORE, with the consent of the Parties to this Decree, it is ORDERED,
ADJUDGED, AND DECREED:

II. JURISDICTION AND VENUE

5. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331, 1345, and 1355, and Section 113(b) of the CAA, 42 U.S.C. § 7413(b), and also has personal jurisdiction over Custom Climate.

6. Custom Climate consents to and shall not challenge entry of this Decree, or this Court's jurisdiction over this action, and does not contest venue in this judicial district.

7. Notice of the commencement of this action has been given to the Florida Department of Environmental Protection and the Environmental Protection Commission of Hillsborough County.

III. PARTIES BOUND

8. The obligations of this Consent Decree apply to and are binding on both the United States, and on Custom Climate and its officers, directors, agents, trustees, servants, employees, successors, and assigns. Any change in ownership or corporate or other legal status of Custom Climate, including, but not limited to, any transfer of assets of real or personal property, shall in no way alter the status or responsibilities of Custom Climate under this Consent

Decree.

9. The undersigned representatives certify that they are fully authorized to enter into the Consent Decree and to execute and to bind the Parties to the Consent Decree.

10. At least thirty (30) Days prior to transferring ownership or operation of the Facility to any other person, Custom Climate must provide a copy of this Consent Decree to each prospective successor owner or operator. No transfer will relieve Custom Climate of its obligations to ensure that the terms of this Consent Decree are implemented.

11. Custom Climate shall provide a copy of this Consent Decree to all officers, employees, and agents whose duties might reasonably include compliance with any provision of this Consent Decree, as well as to any contractor retained to perform work required under this Consent Decree.

12. In any action to enforce this Consent Decree, Custom Climate may not raise as a defense the failure by any of its officers, directors, employees, agents, or contractors to take any actions necessary to comply with the provisions of this Consent Decree.

IV. DEFINITIONS

13. Unless otherwise expressly provided herein, terms used in this Consent Decree which are defined in the Clean Air Act, or in the regulations promulgated pursuant to the Act, shall have the meaning assigned to them in the Act and regulations. Whenever the terms set forth below are used in this Consent Decree, the following definitions apply:

A. "Appliance" means any device which contains and uses a Class I or Class II substance as a Refrigerant, or any device which uses an approved substitute substance as a Refrigerant, and which is used for household or commercial purposes, including any air

conditioner system ("A/C system"), refrigerator, chiller or freezer. 40 C.F.R. § 82.152;

B. "Complaint" means the complaint filed by the United States in this action;

C. "Consent Decree" means this Consent Decree and all appendices attached hereto. In the event of conflict between this Consent Decree and any appendix, the Consent Decree shall control;

D. "Custom Climate" shall mean Custom Climate Control, Inc.

E. "Day(s)" shall mean a calendar day unless expressly stated to be a business day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business the next business day;

F. "Effective Date" means the date of entry of this Consent Decree by the Court;

G. "EPA" means the United States Environmental Protection Agency and any successor departments or agencies of the United States;

H. "Facility" shall mean the Custom Climate office building(s) located at 13311 60th Street North in Clearwater, Florida, 33760;

I. "Field Recovery Cylinder" is a storage tank that is primarily used to store Refrigerant taken out of Appliances during on-site work at the homes or businesses of Custom Climate's customers.

J. "Inspection Report" means the form that is completed by the Technician(s) to document the results of a Preventative Maintenance Inspection of an A/C System;

K. "Paragraph" means a portion of this Consent Decree identified by an Arabic numeral or an upper or lower case letter;

- L. "Parties" means the United States and Custom Climate Control, Inc.;
- M. "Preventative Maintenance Inspection" is an inspection conducted at the home or business of a customer to evaluate the functioning of the A/C System;
- N. "Refrigerant" means any Class I or II ozone-depleting substances or approved substitutes, as per the CAA 42 U.S.C. § 7671(g), that are used for heat transfer purposes and provides a cooling effect;
- O. "Reclaim Ticket" means the form completed by a Technician to document the amount of Refrigerant pumped into or removed from an A/C System. The Reclaim Ticket form is attached to this Consent Decree as Appendix "A."
- P. "Refrigerant Recovery Machine" means the equipment used to remove Refrigerant in an Appliance, including an A/C System, or any Refrigerant recovery cylinder that meets the certification standards as outlined in 40 C.F.R. § 82.158;
- Q. "Responsible Official" means either the President of Custom Climate Control, Inc. or any person responsible for the overall supervision and operation of Custom Climate's business;
- R. "Section " means a portion of this Consent Decree identified by a Roman numeral;
- S. "Shop Recovery Cylinder" is any storage tank maintained at the Custom Climate Facility that is primarily used to store Refrigerant transferred from a Field Recovery Cylinder or any Refrigerant-containing Appliance.;
- T. "Technician" as defined in 40 C.F.R. § 82.152, means any person who performs maintenance, service, repair, or disposal that could be reasonably expected to release Refrigerants from Appliances. Activities reasonably expected to violate the integrity of

the Refrigerant circuit and release Refrigerants from an Appliance include activities such as attaching and detaching hoses and gauges to and from the Appliance, measuring pressure, and adding Refrigerant to and removing Refrigerant from the Appliance;

U. "United States" means the United States of America, acting on behalf of EPA.

V. "Work Order Completion Form" means the form that is completed by the Technician(s) to document the work performed and time spent installing or servicing an A/C system.

V. DEFENDANT

14. Custom Climate is, and at all times relevant to this matter was, the owner and operator of the Facility.

15. Custom Climate is a "person" as defined in Section 302(e) of the CAA, 42 U.S.C. § 7602(e), and within the meaning of Section 113(d) of the CAA, 42 U.S.C. § 7413(d).

VI. COMPLIANCE REQUIREMENTS

16. Custom Climate shall not knowingly vent any Refrigerants during the course of maintaining, servicing, repairing or disposing of any Refrigerant-containing appliance. Custom Climate shall use only U.S. EPA 608 certified Technicians to maintain, service, repair or dispose of a Refrigerant-containing Appliance.

17. Pursuant to the requirements of this Consent Decree, Custom Climate shall carry out the following compliance work:

A. Custom Climate shall have its Refrigerant Recovery Machines checked and serviced by an outside servicing company on a biannual basis. The first maintenance checks shall be performed sixty (60) days after the Effective Date of this Consent Decree. The final maintenance check should be performed thirty (30) days prior to the termination of the Consent Decree.

- B. No later than thirty (30) days after the Effective Date of this Consent Decree, Custom Climate shall establish and maintain the following records and implement, at a minimum, the following procedures:

1. Refrigerant Recovery Cylinders

List of all operable Refrigerant recovery cylinders, identifying: (1) recovery cylinder identification or serial number, (2) capacity (in pounds) of the cylinder, and (3) designation of whether the recovery cylinder is a Field Recovery Cylinder, a Shop Recovery Cylinder, or other type of Refrigerant recovery cylinder. If the recovery cylinder is classified as other, explain its purpose.

2. Refrigerant Recovery Machines

- a. List of all operable Refrigerant Recovery Machines, including the following information for each Machine:
 - i. Manufacturer;
 - ii. Identification or serial number; and
 - iii. Name of Technician(s) to which the Refrigerant Recovery Machine is assigned.
- b. Documentation from outside servicing company evidencing the recorded dates of the biannual maintenance and testing results of each Refrigerant Recovery Machine.

3. Inspection Report Procedures

- a. Inspection reports are required to be recorded and maintained for all of Custom Climate's Preventative Maintenance Inspections.
- b. All Technicians present at a Preventative Maintenance Inspection shall sign and list their employee identification number on the Inspection Report.
- c. If a Technician adds Refrigerant to an A/C System, the Technician shall record both the amount of Refrigerant added and their signature on a Reclaim

Ticket.

- d. If there is more than one Technician present on the service call, the Technician attaching gauges to measure the high and low pressure of an A/C System shall record their initials next to the recorded measurements on the Inspection Report.

4. Refrigerant Recovered and Reclamation Documents

- a. Maintain original purchase invoices of all A/C Systems purchased by Custom Climate, including an identification number for each A/C System and date purchased;
- b. Maintain all Custom Climate Work Order Completion Forms documenting installations of all A/C Systems, including new installations of A/C Systems, change-outs of existing A/C Systems or components, and any other servicing of A/C Systems involving Refrigerant. Each Work Order Completion Form shall record the following information and be completed and signed by the Technician(s) performing the work:
 - i. Description of the work performed. If an A/C System was installed, indicate whether the installed unit was a new or used unit.
 - ii. If an A/C System was installed, indicate whether the old A/C System was removed and taken by Custom Climate for disposal or other use.
 - iii. If the A/C System installed was a new one, record the identification number of the new A/C system. This number should match the identification number on the purchase invoice from the supplier.
 - iv. If the new A/C system is replacing an existing one or if

servicing of the A/C System involving the Refrigerant circuit is required, record the high and low pressure of the existing A/C System prior to its removal.

- v. Record the Refrigerant Recovery Cylinder identification number to which the Refrigerant from the existing A/C System is transferred.
- c. Maintain all Refrigerant purchase invoices, including the date purchased, type of Refrigerant purchased, and quantity (in pounds) of Refrigerant purchased; and
- d. Maintain all reclamation invoices, including the amount of Refrigerant (in pounds) transferred for reclamation, the date, and the name and address of the reclamation facility.

5. Field Recovery Cylinder Log

For each Field Recovery Cylinder, Custom Climate shall maintain the log attached to this Consent Decree as "Appendix A." Below are instructions for completing and maintaining each log:

- a. Each Field Recovery Cylinder must have its own log;
- b. A new log shall be started for each Field Recovery Cylinder thirty (30) days after the Effective Date of this Consent Decree and after each transfer of all Refrigerant out of any Field Recovery Cylinder;
- c. Each transfer of Refrigerant into a Field Recovery Cylinder shall be entered into the log and all information in the table ("Appendix A") shall be completed;
- d. The "Work Order Completion Form number" field in the log shall reference the Work Order Completion Form number for the job from which the Work Order Completion Form was required; and
- e. All logs shall be reviewed and signed by a Responsible Official

upon completion and shall include the following statement:
“Based on information and belief formed after reasonable inquiry,
the statements and information in this log are true, accurate and
complete.”

6. Shop Recovery Cylinder Log

For each Shop Recovery Cylinder, Custom Climate shall maintain the log attached to this Consent Decree as “Appendix B.” Below are instructions for completing and maintaining each log:

- a. Each Shop Recovery Cylinder must have its own log;
- b. A new log shall be started for each Shop Recovery Cylinder thirty (30) days after the Effective Date of this Consent Decree and after each transfer of all Refrigerant out of any Shop Recovery Cylinder;
- c. Each transfer of Refrigerant into a Shop Recovery Cylinder shall be entered into the log and all information in the table (“Appendix B”) shall be completed;
- d. On the log, the “Work Order Completion Form number/ Field Recovery Cylinder ID number” shall reference the Work Order Completion Form number or the identification number of the Field Recovery Cylinder from which the Refrigerant was transferred; and
- e. All Shop Recovery Cylinder logs shall be reviewed and signed by a Responsible Official upon completion and shall include the following statement: “Based on information and belief formed after reasonable inquiry, the statements and information in this log are true, accurate and complete.”

C. Custom Climate shall submit the following reports to U.S. EPA. All reports shall be signed by a Responsible Official and include the following statement: “Based on information and belief formed after reasonable inquiry, the statements and information in

this report are true, accurate and complete.”

1. Initial Report – The initial report shall be submitted thirty (30) days after the Effective Date of this Consent Decree and shall include:

- a. A list of all Custom Climate’s current employees, including the following information for each employee:
 1. Employee name;
 2. Employee identification number;
 3. Job title/duties;
 4. Date hired by Custom Climate;
 5. Whether employee is U.S. EPA 608 certified;
 6. If employee is U.S. EPA 608 certified, include the following information:
 - i. Certifying institution;
 - ii. Certification number;
 - iii. Type of certification;
 - iv. Date certified; and
 - v. Copy of certification card.
- b. List of Refrigerant Recovery Cylinders required by Paragraph 17.B.(1).
- c. List of all Refrigerant Recovery Machines required by Paragraph 17.B.(2).
- d. List of all new or used A/C Systems currently in Custom Climate’s inventory that will be used for installations. This list shall include a serial identification number for each A/C System.
- e. List of the amount and type of all Refrigerant in stock at the Facility.

2. Quarterly Reports – The quarterly reports must be submitted thirty (30) days after the completion of each three-month reporting period, with the first day of the first reporting period starting on the Effective Date of this Consent Decree. Each quarterly report shall state the reporting period and shall include the following information for that reporting period:

- a. In a list or spreadsheet, submit the information required by Paragraph 17.B.(4)(b) along with each correlating Work Order Completion Form number and the name of the Technician(s) completing each installation.
- b. Copies of purchase invoice records required by Paragraph 17.B.(4)(a)

obtained during the reporting period.

- c. Copies of all reclamation records required by Paragraph 17.B.(4)(d) obtained during the reporting period.
- d. Copies of all Field and Shop Recovery Cylinder log books required by Paragraphs 17.B.(5) and (6) generated during the reporting period.
- e. Copies of all Refrigerant Recovery Machine maintenance records required by Paragraph 17.B.(2)(b) generated during the reporting period.
- f. Copies of all Refrigerant purchase invoices required by Paragraph 17.B.(4)©.
- g. Any changes to the information submitted in the initial report in Paragraph 17.C.(1).

3. Where any compliance obligation mandated by this Section of the Consent Decree requires a federal, state, or local permit or approval, Custom Climate must submit timely completed applications and it must take all other actions necessary to obtain all permits or approvals.

4. Custom Climate agrees that failure to submit any of the above referenced reports as required above shall be deemed a violation of this Consent Decree, and Custom Climate shall be liable for stipulated penalties pursuant to Section IX of this Consent Decree.

VII. CIVIL PENALTY

18. Custom Climate shall pay to the United States a civil penalty in the amount of \$5,000.00 in settlement of the claims alleged in the United States' Complaint. Payment is due thirty (30) Days after the Effective Date of this Consent Decree pursuant to the provisions of Section VII of this Consent Decree.

19. No portion of the civil penalty paid pursuant to this Consent Decree may be used to reduce Custom Climate's federal or state tax obligations.

20. The payment to the United States must be by FedWire Electronic Funds Transfer ("EFT") to the United States Department of Justice ("DOJ") Lockbox Bank in accordance with specific instructions to be provided to Custom Climate by the Financial Litigation Unit of the United States Attorney's Office for the Middle District of Florida (Tampa Division), and the payment shall reference DOJ Case No. 90-5-2-1-08600 and the Civil Action Number assigned to this case by the United States District Court for the Middle District of Florida. Any EFTs received after 11:00 a.m. (EST) will be credited on the next business day. Copies of all documents accompanying the FedWire transfer and a transmittal letter referencing the Department of Justice case number, 90-5-2-1-08600, must simultaneously be mailed to all persons listed in Section XV ("Notices").

21. Interest on any portion of the civil penalty not paid within thirty (30) days of the Effective Date shall continue to accrue through the date of full and complete payment. Interest shall accrue at the statutory rate set forth in 28 U.S.C. § 1961. Interest shall be payable pursuant to Section VIII of this Consent Decree.

22. Upon the Effective Date of this Consent Decree, the United States shall be a judgment creditor of Custom Climate for purposes of collecting this penalty and enforcing this Consent Decree.

VIII. DEFAULT

23. If Custom Climate does not timely pay in full the civil penalty required by Section VII of this Consent Decree, Custom Climate will be liable to the United States for any reasonable

attorney's fees, whether suit be brought or not, and all other costs and expenses actually and reasonably incurred by the United States in connection with collecting the civil penalty.

24. This Consent Decree will be considered an enforceable judgment against Custom Climate for purposes of post judgment collection under Federal Rule 69, Federal Rules of Civil Procedure, and other applicable statutory authority without further order of this Court.

IX. STIPULATED PENALTIES

25. Subject to the Force Majeure and Dispute Resolution provisions of this Consent Decree, Custom Climate shall pay stipulated penalties in the amounts set forth below for each failure to comply with the requirements of this Consent Decree. "Compliance" includes payment of the civil penalty, together with any accrued interest, and completion of the requirements under this Consent Decree within the specified time schedules established by and approved under this Consent Decree, as set forth in Section VI ("Compliance Requirements").

26. The following Stipulated Penalties will accrue per violation per day for any noncompliance with the provisions of Section VI (Paragraphs 16, 17A and 17B) of this Consent Decree as follows:

1 st through 30 th day	\$50.00
31 st day and beyond	\$100.00

27. The following Stipulated Penalties will accrue per violation per day for any noncompliance with the provisions of Section VI (Paragraph 17C) of this Consent Decree as follows:

1 st through 30 th day	\$50.00
31 st day and beyond	\$100.00

28. The following Stipulated Penalties will accrue per violation per day for any noncompliance with the provisions of Section VII of this Consent Decree as follows:

1 st through 30 th day	\$50.00
31 st day and beyond	\$100.00

29. For each violation of any other provision of the Decree, Stipulated Penalties will accrue at a rate of \$100 per day for the first thirty (30) days, and \$250 per day thereafter.

30. Stipulated Penalties are due and payable when the United States makes a written demand for payment. Stipulated Penalties are payable in accordance with the following Paragraphs.

31. The United States may, in the unreviewable exercise of its discretion, reduce or waive Stipulated Penalties otherwise due under this Consent Decree.

32. Notwithstanding the date of any demand for Stipulated Penalties, pursuant to Section IX (Paragraph 30), all Stipulated Penalties will begin to accrue on the day after the performance is due or on the day the violation occurs, whichever is applicable. Stipulated Penalties will continue to accrue until performance is completed or until the violation ceases. Nothing herein will prevent the simultaneous accrual of separate penalties for separate violations of this Decree.

33. Stipulated Penalties will continue to accrue, as provided in accordance with Section IX (Paragraph 32), during any Dispute Resolution, with interest, but need not be paid until the following:

A. If the dispute is resolved by agreement or by a decision of EPA's that is not appealed to the Court, accrued Stipulated Penalties determined to be due, together with accrued interest, must be paid to the United States within thirty (30) Days of the effective date of the agreement or the receipt of EPA's decision or order;

B. If the dispute is appealed to the Court and the United States prevails in whole or in part, Custom Climate must, within thirty (30) Days after receipt of the Court's decision or order, pay all accrued Stipulated Penalties determined by the Court to be due, together with accrued interest, except as provided in Subparagraph C, below. However, if Custom Climate prevails, no such Stipulated Penalties shall be due;

C. If the District Court's decision is appealed by any Party, Custom Climate must, within fifteen (15) Days of receipt of the final appellate court decision, pay all accrued Stipulated Penalties determined to be owing to the United States, together with accrued interest.

34. All Stipulated Penalties must be paid within thirty (30) Days after the United States makes a demand for payment. Stipulated Penalties due the United States must, as directed by the United States, be paid by EFT, or by certified or cashier's check in the amount due payable to the "United States Department of Justice," referencing DOJ No. 90-5-2-1-08600 and the Civil Action Number assigned to this case by the United States District Court for the Middle District of Florida, and delivered to the office of the United States Attorney's Office, Middle District of Florida, Tampa Division, 400 North Tampa Street, Suite 3200, Tampa, FL 33602.

35. Custom Climate must pay interest on any balance of Stipulated Penalties not paid within the time provided in Section IX (Paragraph 34). Interest on Stipulated Penalties will be computed as provided for in 28 U.S.C. § 1961. If any Stipulated Penalty is not paid in full when due, the United States is entitled to recover the costs (including attorneys fees) incurred in any action necessary to collect any Stipulated Penalty or interest thereon.

X. FORCE MAJEURE

36. "Force Majeure," for purposes of this Consent Decree, is defined as any event

arising from causes beyond the control of Custom Climate, its contractors, or any entity controlled by Custom Climate, which delays the performance of any obligation under this Consent Decree despite Custom Climate's best efforts to fulfill the obligation. "Best efforts" includes using best efforts to anticipate any potential Force Majeure event, and to address the effects of any such event as it is occurring, and after it has occurred, such that the delay is minimized to the greatest extent possible. "Force Majeure" does not include Custom Climate's financial inability to perform any obligation under this Consent Decree.

37. Examples of events that are not Force Majeure include, but are not limited to, unanticipated or increased costs or expenses of work, financial difficulties encountered by Custom Climate in performing such work, or the failure of Custom Climate or its representative(s) including contractors to make complete and timely application for any required approval or permit.

38. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Decree, as to which Custom Climate intends to assert a claim of Force Majeure, Custom Climate must provide notice in writing, as provided in Section XV ("Notices") of this Consent Decree, within fifteen (15) Days of the time Custom Climate first knew of, or by the exercise of due diligence should have known of, the event. Notification must include an explanation and description of the reasons for the delay; the anticipated duration of the delay; a description of all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; and Custom Climate's rationale for attributing the delay to a Force Majeure event. Failure to comply with these requirements will preclude Custom Climate from asserting

any claim for Force Majeure.

39. Custom Climate has the burden of proving, by a preponderance of the evidence, that an event was a Force Majeure event; that Custom Climate gave the notice required by the preceding Paragraph; that Custom Climate took all reasonable steps to prevent or minimize any delay caused by the event; and that any period of delay Custom Climate claims was attributable to the Force Majeure event was caused by that event.

40. EPA will notify Custom Climate in writing of its agreement or disagreement with Custom Climate's claim of a delay or impediment to performance within thirty (30) Days of receipt of the notice provided under Section X (Paragraph 38). If EPA agrees that Custom Climate could not have prevented or mitigated any delay, or anticipated delay, attributable to a Force Majeure event by the exercise of due diligence, EPA will notify Custom Climate in writing of its agreement to an extension of time for Custom Climate's performance of the affected compliance requirement by a period not exceeding the delay actually caused by the event. In the event the Parties cannot agree, EPA's determination will govern unless Custom Climate invokes formal Dispute Resolution pursuant to Section XI of this Consent Decree within twenty (20) Days after EPA's notification. An extension of time for performance of one or more obligations affected by a Force Majeure event will not, of itself, extend the time for performance of any other obligation.

41. Stipulated Penalties will not be due for the number of days of noncompliance determined to be caused by a Force Majeure event as defined in this Section of the Consent Decree.

XI. DISPUTE RESOLUTION

42. Unless otherwise expressly provided for in this Consent Decree, the Dispute Resolution procedure of this Section is the exclusive mechanism to resolve all disputes arising under this Consent Decree. The procedures set forth in this Section do not apply to actions by the United States to enforce obligations of Custom Climate that have not been disputed in accordance with this Section.

43. Any dispute which arises under or with respect to this Consent Decree will in the first instance be the subject of informal negotiations between the Parties. The period for informal negotiations may not exceed thirty (30) days from the time the dispute arises, unless it is modified by written agreement of the parties to the dispute. The dispute will be considered to have arisen when one party sends the other party a written notice of dispute.

44. If the Parties cannot resolve a dispute by informal negotiations under the preceding Paragraph, then the position advanced by EPA will be considered binding unless, within fifteen (15) Days after the conclusion of the informal negotiations period, Custom Climate invokes the formal Dispute Resolution procedures by serving on the United States, in accordance with Section XV ("Notices") of this Consent Decree, a written Statement of Position on the matter in dispute, including, but not limited to, any supporting factual data, analysis, opinion, or documentation.

45. Within thirty (30) Days after receipt of Custom Climate's Statement of Position, the United States will serve on Custom Climate its Statement of Position, including any supporting factual data, analysis, opinion or documentation. Within thirty (30) Days after receipt of the United States' Statement of Position, Custom Climate may submit a reply.

46. An administrative record of the dispute must be maintained by EPA and must contain all statements of position, including supporting documentation, submitted pursuant to this Section. This administrative record is the basis upon which the matter in dispute is to be resolved.

47. The Director of the Air Enforcement Division, Office of Enforcement and Compliance Assurance ("Director"), or a properly designated representative, will issue a final decision resolving the dispute. Where the dispute pertains to the performance of the Compliance Requirements under Section VI of this Consent Decree, the decision will be upon the administrative record maintained by EPA pursuant to Section XI (Paragraph 46). The decision of the Director will be binding on Custom Climate, subject only to the right to seek judicial review, in accordance with Section XI (Paragraph 48) below.

48. The decision issued by EPA under Section XI (Paragraph 47) may be reviewed by this Court upon a motion filed by Custom Climate and served upon the United States within fourteen (14) Days of receipt of EPA's decision.

49. In any dispute before the Court, Custom Climate shall have the burden of proof and the scope of review shall be as set forth in 5 U.S.C. § 706. Custom Climate will bear the burden of demonstrating that its position clearly complies with and furthers the objectives of this Consent Decree and the CAA. The Court may grant relief in accordance with applicable principles of law governing review of agency determinations on the administrative record, including but not limited to remanding the dispute for further consideration by the agency or supplementation of the records as appropriate.

50. The invocation of formal Dispute Resolution procedures under this Section will

not extend, postpone or affect in any way any obligation of Custom Climate under this Consent Decree, not directly in dispute, unless the United States or the Court agrees otherwise. Stipulated Penalties with respect to the disputed matter will continue to accrue from the first day of noncompliance, but payment will be stayed pending resolution of the dispute as provided in Section IX (Paragraphs 48 and 49). In the event that Custom Climate does not succeed on the disputed issue, Stipulated Penalties will be assessed and paid as provided in Section IX ("Stipulated Penalties").

XII. INFORMATION COLLECTION AND RETENTION

51. The United States and its representatives, including attorneys, contractors, and consultants, will have the right of entry to the Facility, at all reasonable times, upon presentation of credentials to:

- A. Monitor the progress of all requirements under this Consent Decree;
- B. Verify any data or information submitted to the United States in accordance with the terms of this Consent Decree; and
- C. Assess Custom Climate's compliance with this Consent Decree.

52. Until the termination of this Consent Decree, Custom Climate must retain, and must instruct their contractors and agents to preserve, all nonidentical copies of all records and documents (including documents in electronic form) now in their or their contractors' or agents' possession or control, that relate in any manner to Custom Climate's performance of its obligations under this Consent Decree. This record retention requirement will apply regardless of any corporate document-retention policy to the contrary.

53. At the conclusion of the document-retention period provided in the preceding

Paragraph, Custom Climate must notify the United States, at the addresses indicated in Section XV (“Notices”) below, at least ninety (90) Days prior to the destruction of any records or documents subject to the requirements of the preceding Paragraph, and, upon request by the United States, Custom Climate must deliver any such records or documents to EPA. If EPA does not respond to Custom Climate’s notice within the 90-day period, or if EPA does not request that such documents be delivered to EPA’s offices, then Custom Climate shall be free to dispose of such records at its discretion. Custom Climate may assert that certain documents, records, or other information is privileged under the attorney-client privilege or any other privilege recognized by federal law. If Custom Climate asserts such a privilege, it must provide the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of the author of the document, record or information; (4) the name and title of each addressee and recipient; (5) a description of the subject of the document, record, or information; and (6) the privilege claimed by Custom Climate. No documents, reports, or other information created to comply with the requirements of this Consent Decree may be withheld on the grounds that they are privileged.

54. This Consent Decree in no way limits or affects any right of entry and inspection, or any right to obtain information, held by the United States pursuant to applicable federal or state laws, regulations, or permits.

XIII. EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS

55. This Consent Decree resolves any and all claims of the United States against Custom Climate for injunctive relief and civil penalties for the matters alleged in the Complaint. Nothing in this Consent Decree is intended to operate in any way to resolve any other civil claims

or any criminal liability of Custom Climate.

56. This Consent Decree may not be construed to prevent or limit the rights of the United States to obtain penalties or injunctive relief under the CAA, or under other federal or state laws, regulations, or permit conditions, except as expressly specified herein.

57. Custom Climate is responsible for achieving and maintaining complete compliance with all applicable federal, state and local laws, regulations, and permits. Custom Climate's compliance with this Consent Decree is not a defense to any action commenced pursuant to said laws, regulations, or permits.

58. This Consent Decree does not limit or affect the rights of Custom Climate or of the United States against any third parties, not party to this Consent Decree, nor does it limit the rights of third parties, not party to this Consent Decree, against Custom Climate, except as otherwise provided by law.

59. This Consent Decree may not be construed to create rights in, or grant any cause of action to, any third party not party to this Consent Decree.

60. The United States reserves any and all legal and equitable remedies available to enforce the provisions of this Consent Decree, except as expressly stated herein.

XIV. COSTS

61. The Parties will each bear their own costs of litigation of this action, including attorneys' fees, except as provided in Section VIII (Paragraph 23) and Section IX (Paragraph 33).

XV. NOTICES

62. Whenever written notifications, submissions, or communications to the United States or to Custom Climate are required by this Consent Decree, they must be made in writing

and addressed as follows:

As to the United States:

Shanieka Pennamon
Air Enforcement Section
U.S. Environmental Protection Agency - Region 4
Sam Nunn Atlanta Federal Center
61 Forsyth Street, SW
Atlanta, GA 30303-8931

Ellen Rouch
Assistant Regional Counsel
U.S. Environmental Protection Agency - Region 4
Sam Nunn Atlanta Federal Center
61 Forsyth Street, SW
Atlanta, GA 30303-8931

As to Custom Climate:

Heinz J. Roeshink
Custom Climate Control, Inc.
13311 60th Street
Clearwater, FL 33767

Starr Parker
Attorney at Law
Law Office of Starr Parker, P.A.
902 West Lumsden Road
Suite 105
Brandon, FL 33511

63. A notice submitted pursuant to this Section will be deemed timely if it is correctly addressed and post marked on or before the date the notice is due, unless otherwise provided in this Consent Decree or by mutual agreement of the Parties in writing.

XVI. RETENTION OF JURISDICTION

64. The Court will retain jurisdiction of this case until termination of this Consent Decree, for the purpose of enabling any of the Parties to apply to the Court for such further order,

direction, or relief as may be necessary or appropriate for the construction or modification of this Consent Decree, or to effectuate or enforce compliance with its terms, or to resolve disputes in accordance with Section XI ("Dispute Resolution") of this Consent Decree.

XVII. MODIFICATION

65. The terms of this Consent Decree may be modified only by a subsequent written agreement signed by all the Parties. Where the modification constitutes a material change to any term of this Consent Decree, it will be effective only upon approval by the Court. The terms and schedules contained in Section VI ("Compliance Requirements") of this Consent Decree may be modified upon written agreement of the Parties without Court approval, unless any such modification effects a material change to the terms of this Consent Decree or materially affects Custom Climate's ability to meet the objectives of this Consent Decree.

XVIII. TERMINATION

66. Any party may move for termination of this Consent Decree after 30 days of all of the following occurring:

- A. Custom Climate has complied with all the terms of this Consent Decree for a period of at least twelve (12) consecutive months and it has submitted four Quarterly Reports, due pursuant to Section VI 17(C) to EPA;
- B. Custom Climate has paid the entire civil penalty, and any stipulated penalties, interest and charges due under Sections VII and IX of this Consent Decree;
- C. Custom Climate has certified compliance with all terms of this Consent Decree to the United States and to the Court as is stated below:

I certify that I am familiar with all the compliance requirements set

out in the Custom Climate Consent Decree and that, based on my inquiry of those individuals directly responsible for carrying out each of the Consent Decree requirements, Custom Climate has remained in compliance with the Consent Decree for a period of at least twelve (12) consecutive months, and this information is true and complete to the best of my knowledge. I know that there are significant penalties for submitting false information, including fines and imprisonment for knowing violations. See 18 U.S.C. § 1001.

and

- D. EPA within 60 days of receiving Custom Climate's certification under subparagraph c. of this Paragraph has not contested that certification.

If the United States disputes Custom Climate's certification, the Consent Decree shall remain in effect pending resolution of the dispute by the parties or the Court.

XIX. PUBLIC PARTICIPATION

67. This Consent Decree will be lodged with the Court for a period of not less than thirty (30) Days for public notice and comment in accordance with 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent if the public comments regarding the Consent Decree disclose facts or considerations indicating that the Consent Decree is inappropriate, improper or inadequate. Custom Climate consents to the entry of this Consent Decree without further notice.

XX. SIGNATORIES/SERVICE

68. Each undersigned representative of Custom Climate and the Assistant Attorney General for the Environment and Natural Resources Division of the Department of Justice certifies that he or she is fully authorized to enter into the terms and conditions of this Consent

Decree and to execute and legally bind the Party he or she represents.

69. This Consent Decree may be signed in counterparts, and such counterpart signature pages will be given full force and effect.

70. Custom Climate agrees not to oppose entry of this Consent Decree by the Court or to challenge any provision of the Consent Decree, unless the United States has notified Custom Climate in writing that it no longer supports entry of the Consent Decree.

71. Custom Climate hereby agrees to accept service of process by mail with respect to all matters arising under or relating to this Consent Decree and to waive the formal service requirements of Rule 4 of the Federal Rules of Civil Procedure ("FRCP") and any applicable Local Rules of this Court including, but not limited to, service of a summons.

XXI. INTEGRATION

72. This Consent Decree constitutes the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in the Consent Decree and supersedes all prior agreements and understandings, whether oral or written. No other document, nor any representation, inducement, agreement, understanding, or promise, constitutes any part of this Consent Decree or the settlement it represents, nor can it be used in construing the terms of this Consent Decree.

XXII. FINAL JUDGMENT

73. Upon approval and entry of this Consent Decree by the Court, this Consent Decree will constitute a final judgment of the claims settled herein.

IT IS SO ORDERED this _____ day of _____, 2007.

United States District Judge

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of the United States v. Custom Climate Control, Inc.,

FOR PLAINTIFF UNITED STATES OF AMERICA:

ELLEN MAHAN
Deputy Chief
Environmental Enforcement Section
Environment and Natural Resources
Division
United States Department of Justice

Date: 12/4/07

ESPERANZA ANDERSON
Trial Attorney
Environmental Enforcement Section
Environment and Natural Resources
Division
United States Department of Justice
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044
(202) 514-4059

Date: 12/4/07

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of the United States v. Custom Climate Control, Inc.,

(

MARY J. WILKES
Regional Counsel
Region 4
U.S. Environmental Protection Agency - Region 4
Sam Nunn Atlanta Federal Center
61 Forsyth Street, SW
Atlanta, GA 30303-8909

Date: 12/3/07

ELLEN ROUCH
Assistant Regional Counsel
U.S. Environmental Protection Agency - Region 4
Sam Nunn Atlanta Federal Center
61 Forsyth Street, SW
Atlanta, GA 30303-8909

Date: Dec 14 2007

THE UNDERSIGNED PARTY enter into this Consent Decree in the matter of the United States
v. Custom Climate Control, Inc.,

FOR CUSTOM CLIMATE CONTROL, INC.:

HEINZ V. ROESHINK
President
Custom Climate Control, Inc.
13311 60th St. North
Clearwater, FL 33760

Date: 8-29-02

THE UNDERSIGNED PARTY enter into this Consent Decree in the matter of the United States
v. Custom Climate Control, Inc.

FOR CUSTOM CLIMATE CONTROL, INC.:

HEINZ J. ROESHINK
President
Custom Climate Control, Inc.
13311 60th St. North
Clearwater, FL 33760

Date: _____

STARR PARKER
Attorney at Law
Law Office of Starr Parker, P.A.
902 West Lumsden Road
Suite 105
Brandon, FL 33511

Date: 12-14-07